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The crime of genocide. A United Nations convention is aimed at preventing destruction of groups and at punishing those responsible.

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Recommended Citation

United Nations Office of Public Information, "The crime of genocide. A United Nations convention is aimed at preventing destruction of groups and at punishing those responsible." (1959). *PRISM: Political & Rights Issues & Social Movements*. 603.
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THE CRIME OF GENOCIDE

A United Nations Convention —

is Aimed
at Preventing
Destruction of Groups
and at Punishing
those
Responsible



Price 15 cents

United Nations, New York

UNITED NATIONS PUBLICATION

Sales Number: 59.I.3

Price: \$0.15; 1/- sterling; Swiss franc 0.50

First Published July 1949

Second Revised Edition September 1952

Third Revised Edition October 1955

Fourth Revised Edition August 1956

Fifth Revised Edition January 1959

Published by United Nations Office of Public Information

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WHAT IS GENOCIDE?

GENOCIDE is a new name for an old crime. Literally the word means the intentional destruction of national, racial, religious or ethnic groups.

Dating back to the sacking of Carthage or even earlier, this crime of crimes, as Dr. Raphael Lemkin, who coined the word "Genocide," puts it, "has repeated itself with the regularity of a biological law." But it was left to our generation to see it practised on the largest scale by Nazi Germany; deliberately planned as state policy and carried out with every resource of science and complete absence of humanity.

"Neither animals nor uneducated savages," said W. J. Dignam, Australia's representative to the General Assembly in 1948, "would deliberately plan with the fiendish and cold-blooded cruelty which accompanies modern examples of genocide. Hardened soldiers, accustomed to the callousness and brutalities of war, were overwhelmed when they witnessed for the first time the physical deterioration of some of those victims still living after this crime had been perpetrated against them."

The purpose of the Convention is to prevent and punish genocide whether committed in time of war or in time of peace.

"Genocide has been committed through the ages," said Begum Ikramullah, of Pakistan, at the Assembly session in 1948. "While it has always shocked the conscience of mankind, nothing has been done to punish the crime. The discoveries of science have put such weapons in the hands of men that genocide today can be swift and terrible indeed. Therefore such a Convention became imperative and its acceptance should not be delayed."

A convention in international law is an agreement among sovereign nations. It is a legal compact which pledges every contracting party to accept certain obligations. Broadly speaking it is a treaty among many nations.

How is Genocide defined in the Convention?

Genocide, the Convention declares, is the committing of certain acts with intent to destroy—wholly or in part—a national, ethnic, racial or religious group as such.

What are the acts? First, of course, actual killing. But it is possible to destroy a group of human beings without direct physical massacre. So the Convention includes in the definition of genocide the acts of causing serious bodily or mental harm; deliberate infliction of conditions of life “calculated to bring about” physical destruction; imposing measures to prevent birth and, finally, of forcibly transferring children of one group to another group. These acts, records the Convention, constitute “Genocide.”

How the Convention proposes to “prevent and punish”

The first thing that the Convention does is to declare that genocide *whether committed in time of peace or war* is a crime under international law which the contracting countries “undertake to prevent and punish.”

This declaration—Article I of the Convention—reinforces a resolution unanimously passed by the General Assembly on December 11, 1946. By this resolution all the Member countries declared genocide an international crime. These are the main principles established by the Convention:

One, the Convention binds the contracting states to pass necessary legislation to give effect to its provisions, especially to provide effective penalties.

Two, the countries obligate themselves to try persons charged with these offences in their competent national court.

Three, the countries agree that the acts listed shall not be considered as political crimes. Therefore they pledge to grant extradition in accordance with their laws and treaties.

All these pledges are for national action. But the Convention also envisages trial by an international penal tribunal should one be set up and should the contracting parties accept its jurisdiction. Furthermore it provides that any of the contracting countries may bring a charge of genocide, or of the other acts, before the competent organs of the United Nations and ask for appropriate action according to the Charter.

If there is any dispute between one country and another on the interpretation, application or fulfilment of the Convention, the dis-

pute must be submitted to the International Court of Justice at the request of any of the parties to the dispute.

How does a domestic law against genocide read?

The form of the law will necessarily vary according to the forms of statutes in different countries. A good example is the law adopted by Denmark in 1955. This law reads:

#1

“Whoever with the intent to destroy in whole or in part a national, ethnic, racial or religious group as such,

- a) kills members of the group,
 - b) causes serious bodily or mental harm to members of the group,
 - c) deliberately inflicts on the group conditions of life calculated to bring about its physical destruction in whole or in part,
 - d) imposes measures intended to prevent births within the group,
 - e) forcibly transfers children of the group to another group,
- is punishable for genocide by imprisonment for life or for a time not less than 16 years.

#2

“Attempt and complicity in the acts enumerated in #1 shall be punished according to Chapter 4 of the Criminal Code for Civilians.”

Given at the Christiansborg Castle, the 29th of April, 1955
Under Our Signature and Seal of the King
Frederik Rex

Who may be punished?

Article IV of the Convention declares that those guilty of genocide and the other acts listed shall be punished “whether they are constitutionally responsible rulers, public officials or private individuals.”

This clause makes it impossible for a person to plead immunity because he was the head of a state or other public official.

Will the Convention be effective?

The effectiveness of any law does not depend on the law itself, but upon the people who apply it. It will, therefore, be incumbent upon nations to develop the necessary moral force to be expressed in decisions to apply the Genocide Convention to save peoples and their cultures from obliteration. Genocide is the most gigantic and atrocious of all crimes. When a nation has been destroyed the great treasures of its spiritual heritage have gone and world culture has been impoverished. The basic resolution on Genocide of December 11, 1946, stresses especially the losses in culture which have occurred because of past cases of Genocide. Not only the solidarity of nations in preserving human life, but also the interdependence and mutual borrowing among national cultures is at stake.

In a crime like Genocide the solidarity and mutual sympathy of the victims naturally cross the boundaries of states. Members of victimized groups will be more eager to help each other by denunciation. This is only true in the crime of Genocide and does not apply to other offenses. It is also hoped that the very existence of the Genocide Convention and the severe penalties which are attached to this will act as a deterrent. In terms of human relationships the element of prevention which is proclaimed by the Genocide Convention might prove as constructive as the element of punishment.

Gradually the feeling will grow in world society that by protecting the national, racial, religious and ethnic groups everywhere in the world we will be protecting ourselves.

Who can Prefer a Charge?

Article VIII of the Convention says that any contracting party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the related acts. These related acts are defined in Article III, which makes genocide itself, and four related acts, punishable — conspiracy to commit genocide, direct public incitement to commit genocide, an attempt to commit the crime or complicity in its commission.

What About International Jurisdiction?

During discussion by the Legal Committee in 1948, the question of international jurisdiction was considered carefully. As a result the idea is envisaged and provided for in Article VI of the Convention. Further, along with the Convention, the Assembly passed a resolution which made three provisions.

Firstly, it recognized that “in the course of development of the international community there will be an *increasing need* of an international judicial organ for the trial of certain crimes under international law.”

Secondly, it invited the International Law Commission to study both the desirability and the possibility of establishing such an international judicial organ “for the trial of persons charged with genocide, or other crimes over which jurisdiction will be conferred upon that organ by international conventions;” and

Thirdly, it requested the International Law Commission in carrying out its task, to pay attention to the possibility of establishing a Criminal Chamber of the International Court of Justice.

Who may become Parties to the Convention?

All Member states of the United Nations are naturally entitled to become parties to the Convention. Some of them signed the Convention in Paris immediately after its passage by the Assembly on December 9, 1948. By December 31, 1949, the date set for closing the Convention for signature, forty states had signed. Non-Member states, invited by the General Assembly, have signed as well as Member states.

A legal compact like the Convention does not, however, become binding on mere signature. It has to be ratified by each signatory country according to its constitutional processes. The “instrument of ratification,” a communication formally signifying ratification, is then deposited with the Secretary-General.

The Convention provides that, after December 31, 1949, no more signatures will be accepted. However, Member states, as well as non-Members invited by the Assembly, may accede to the Convention by depositing “instruments of accession” with the Secretary-General.

When did the Convention come into effect?

The Convention came into force January 12, 1951, ninety days after

twenty states had ratified or acceded as provided in the Convention.

It is to remain in force for ten years and is renewed in successive periods of five years for countries that have not denounced it.

"Denunciation" is the term for the procedure of withdrawing from the Convention. Any country can give notice of such withdrawal six months before the expiration of the current period for which it is bound. If, as a result of such denunciations, there are fewer than sixteen nations bound by it, then the Convention will cease to be in force.

Were there any differences between Member states on the Convention?

There was no difference at all on condemnation of genocide or on the necessity of measures to prevent and punish the crime. And, as has been noted, the Convention was eventually passed by the General Assembly by a vote of 55 to 0, with no abstentions.

This does not mean that there were no differences on various provisions. The U.S.S.R. felt so strongly on certain "omissions" or "loopholes" that it submitted amendments in the final plenary meeting, notwithstanding earlier rejection of these points by the Committee. It wanted the preamble to the Convention to state "the organic connection" of the crime with fascism, nazism and other race theories, and, in line with this, the U.S.S.R. desired an additional clause binding the parties to disband and prohibit organizations aimed at inciting racial, national or religious hatred and at provoking genocide. Further, it desired to extend the definition of genocide to include what was termed "cultural genocide," deliberate destruction of the language, religion or culture of any national, racial or religious group. The U.S.S.R. also desired that the application of the Convention should extend to all dependent territories of the signatory countries. Finally, the U.S.S.R. opposed the provision (Article VI) envisaging trial by an international tribunal. This point, the Soviet Union argued, would weaken national responsibility. Also the establishment of international jurisdiction was, it said, unacceptable in principle because it violated sovereignty.

These amendments were not acceptable to the majority. Broadly, their position was that references to fascism, nazism and race theories would have a limiting effect. The Genocide Convention was to cover the commission of the crime in times of peace as well as war or in preparation for war. As to extending application to dependent terri-

tories, Great Britain emphasized that constitutionally it could not commit its dependent territories. These territories may have to pass the legislation in order to apply the provisions and, however likely this may be, Great Britain could not commit them automatically.

On "cultural genocide" in the definition of the crime, China, Haiti, Lebanon, Liberia, Pakistan, the Philippines, Saudi Arabia and Syria voted for the U.S.S.R. amendment, in addition to the Ukrainian S.S.R., Yugoslavia, the Byelorussian S.S.R., Czechoslovakia and Poland, who voted for all the U.S.S.R. amendments. The majority agreed, of course, that crimes like the destruction of churches, schools and libraries, or other measures of cultural extermination, were barbarous but, they felt, protection of these rights belong to the field of human rights. To extend the Genocide Convention to cover such crimes, they felt, would weaken the purpose for which the Convention is designed: namely, to prevent and punish physical destruction of specific human groups.

Venezuela proposed a modification to the effect that the systematic destruction of the religious edifices, schools and libraries of a group should be included in the definition but withdrew the amendment.

After the U.S.S.R. amendments were put to vote and defeated, representative A. P. Morozov restated his country's position. He then added: "The fault which I have mentioned in the present draft convention undoubtedly diminishes its effectiveness. Since, however, the convention does provide for the condemnation of genocide, since it appeals to all countries to fight the crime of genocide—which so far has remained unpunished only too frequently — the U.S.S.R. delegation will vote in favor of the draft convention as submitted."

Numerous other concessions in favor of securing unanimity were made by a number of countries in the course of two years of study and debate and drafting. The United States, for example, gave up its earlier insistence on the inclusion of "political" groups in the definition. Brazil opposed the idea of international penal jurisdiction as "too vague and idealistic." On the other hand, France desired not only to include the principle of an international penal court but also detailed ideas on the functions of such a court. Indeed, at an earlier stage, the United Kingdom held the view that the whole idea of a workable Convention on the subject was unrealistic. It also anticipated certain legal difficulties with respect to amending its criminal law. But, through patient debate, which, as Dr. Gilberto Amado, of Brazil, pointed out, did not follow any "hermetically sealed compartments"

of political or ideological affinities, the Assembly was able to achieve unanimity in one of the greatest decisions ever taken by an international organization.

How the Convention was prepared

In 1946 the General Assembly requested the Economic and Social Council to undertake the necessary studies with a view to drawing up a draft Convention on the crime of genocide. In 1947 the Secretary-General at the request of the Economic and Social Council prepared a first draft of the Convention and circulated it to Member states for their comments. In 1948 the Economic and Social Council appointed an *ad hoc* Committee of seven members to submit to it a revised draft. This the Committee did and after a general debate, the Council decided on August 26 to transmit the draft to the General Assembly. At the Paris session of the General Assembly the draft was debated by the Legal Committee, and eventually adopted by the General Assembly on December 9, 1948.

Ratifications and Accessions

As of January, 1959, instruments of ratification or accession to the Convention had been deposited by the following 59 Governments: Afghanistan, Albania, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Burma, Byelorussian S.S.R., Cambodia, Canada, Ceylon, Chile, China, Costa Rica, Cuba, Czechoslovakia, Denmark, Ecuador, El Salvador, Ethiopia, France, Federal Republic of Germany, Ghana, Greece, Guatemala, Haiti, Honduras, Hungary, Iceland, Iran, Iraq, Israel, Italy, Jordan, Republic of Korea, Laos, Lebanon, Liberia, Mexico, Monaco, Morocco, Nicaragua, Norway, Pakistan, Panama, Philippines, Poland, Romania, Saudi Arabia, Sweden, Tunisia, Turkey, Ukrainian S.S.R., U.S.S.R., United Arab Republic, Vietnam and Yugoslavia.

In 1949 and 1953 the General Assembly, recognizing the importance of the Convention, appealed to states for ratifications and accessions. The response has been gratifying. The Genocide Convention has the largest number of ratifications of any of those adopted under the United Nations Charter.

The General Assembly has recommended that parties to the Convention who administer dependent territories should take all possible measures to extend provisions of the Convention to those territories. So far Belgium and Australia have done so.

Advisory Opinion by the International Court of Justice in 1951

On May 28, 1951, the International Court of Justice, in accordance with a request of the General Assembly of November 16, 1950, delivered an advisory opinion, by a vote of 7 to 5, on three questions concerning reservations to the Genocide Convention.

First, the Court decided that a state which has made and maintained a reservation which has been objected to by one or more of the parties to the Convention, but not by others, can be regarded as being a party to the Convention if the reservation is compatible with the object and purpose of the Convention; otherwise, that state cannot be regarded as being a party.

In reply to the General Assembly's second question concerning the effect of the reservations with respect to parties objecting to a reservation and parties accepting it, the Court held that if a party to the Convention objects to a reservation which it considers to be incompatible with the object and purpose of the Convention, it can in fact consider that the reserving state is not a party to the Convention. If, on the other hand, a party accepts the reservation as being compatible with that object and purpose, it can in fact consider that the reserving state is a party.

The Court decided, third, that an objection made by a signatory state which has not yet ratified the Convention can have legal effect only upon ratification; until that moment the objection merely serves as a notice to the other states of the eventual attitude of the signatory state. Further, an objection made by a state which is entitled to sign or accede, but which has not yet done so, is without legal effect.

Prospects for the Genocide Convention

Throughout the world, people aware of the importance and vital necessity of the Genocide Convention are working for its adoption. The basis of their support transcends religious beliefs and crosses political lines.

Perhaps the best expression of the Convention's appeal has been made by Gabriela Mistral, the famous Chilean poet who won the Nobel Prize for Literature in 1945.

"With amazing regularity genocide has repeated itself throughout history," she wrote. "Despite all advances in our civilization the twentieth century must unfortunately be considered as one of those most

guilty of the crime of genocide. Losses in life and culture have been staggering. But deep in his heart man cherishes a fervent yearning for justice and love; among small nations and minorities the craving for security is particularly alive. The success of the Genocide Convention today and its greater success tomorrow can be traced to the fact that it responds to necessities and desires of a universal nature. The word genocide carries in itself a moral judgment over an evil in which every feeling man and woman concurs."

TEXT OF THE CONVENTION

The Contracting Parties,

Having considered the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world;

Recognizing that at all periods of history genocide has inflicted great losses on humanity; and

Being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required:

Hereby agree as hereinafter provided.

ARTICLE I. The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

ARTICLE II. In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.

ARTICLE III. The following acts shall be punishable:

(a) Genocide;

(b) Conspiracy to commit genocide;

(c) Direct and public incitement to commit genocide;

(d) Attempt to commit genocide;

(e) Complicity in genocide.

ARTICLE IV. Persons committing genocide or any of the other acts enumerated in Article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

ARTICLE V. The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in Article III.

ARTICLE VI. Persons charged with genocide or any of the other acts enumerated in Article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

ARTICLE VII. Genocide and the other acts enumerated in Article III shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

ARTICLE VIII. Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article III.

ARTICLE IX. Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or any of the other acts enumerated in Article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

ARTICLE X. The present Convention of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of 9 December 1948.

ARTICLE XI. The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

After 1 January 1950, the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid.

Instruments of accession shall be deposited with the Secretary-General of the United Nations.

ARTICLE XII. Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

ARTICLE XIII. On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a *procès-verbal* and transmit a copy of it to each Member of the United Nations and to each of the non-member States contemplated in Article XI.

The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.

Any ratification or accession effected subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession.

ARTICLE XIV. The present Convention shall remain in effect for a period of ten years as from the date of its coming into force.

It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period.

Denunciation shall be affected by a written notification addressed to the Secretary-General of the United Nations.

ARTICLE XV. If, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective.

ARTICLE XVI. A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General.

The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

ARTICLE XVII. The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in Article XI of the following:

(a) Signatures, ratifications and accessions received in accordance with Article XI;

(b) Notifications received in accordance with Article XII;

(c) The date upon which the present Convention comes into force in accordance with Article XIII;

(d) Denunciations received in accordance with Article XIV;

(e) The abrogation of the Convention in accordance with

Article XV;

(f) Notifications received in accordance with Article XVI.

ARTICLE XVIII. The original of the present Convention shall be deposited in the archives of the United Nations.

A certified copy of the Convention shall be transmitted to all Members of the United Nations and to the non-member States contemplated in Article XI.

ARTICLE XIX. The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

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